

Holliday, Renee

From: Dizdul, Jacqueline
Sent: Tuesday, March 21, 2006 2:14 PM
To: Holliday, Renee
Subject: FW: FTC COMPLAINT AGAINST RCA and SONY/BMG

-----Original Message-----

From: Lawsuit Email [mailto:claylawsuit@hotmail.com]
Sent: Wednesday, February 22, 2006 4:40 PM
To: Majoras, Deborah P.; dmajoras@ftc.gov; Harbour, Pamela Jones; Leibowitz, Jonathan D.; Kovacic, William; jrosch@ftc.gov; jschwartzman@ftc.gov; Katz, Mitchell J.; Dorman, Frank; Farrell, Claudia B.; Dizdul, Jacqueline; cpineda@ftc.gov; Klurfeld, Jeffrey; Foster, Andrea L.
Subject: FTC COMPLAINT AGAINST RCA and SONY/BMG

February 22, 2006

Chairman Deborah Platt Majoras,
Federal Trade Commission
600 Pennsylvania Avenue, N.W.,
Washington, D.C. 20580

Re: False Advertising Complaint against RCA Records and SONY/BMG with regard to Clay Aiken

Dear Honorable Chairman Majoras,

Under the provisions of the Federal Trade Commission Act and Title 15 of the U.S. Code, please find that, the undersigned nine aggrieved consumers, hereby file a false advertising complaint against recording entities RCA Records (RCA) and parent conglomerate SONY/BMG Music Entertainment (SONY/BMG). This complaint relates to observable trends and practices in the manner in which RCA and SONY/BMG markets and promotes its stable of artists nationwide and internationally. Based in New York City, SONY/BMG is a well-known recording industry conglomerate consisting of 17 separate record labels (including RCA) with offices around the world. These recording labels represent some of the world's best known artists, including performer Clay Aiken.

This complaint raises the fundamental issue of whether, for these recording entities, the CD is the product or is the artist the product? We hold that, based on the company's own actions and investment, that it is clearly the latter.

1. False And Misleading Advertising.

RCA and SONY/BMG have a vested interest in the marketing, promotion and advertising of their artists recording for their labels. They accomplish this through carefully crafted publicity, advertising and promotion to create a marketable public image for each artist, designed to entice the maximum amount of consumers. This calculated public image is further reinforced through scripted music videos and meticulously managed media interviews and appearances, among other devices. In fact, the marketing and publicity behind the manufactured public image is often termed the "Hollywood machine".

RCA and SONY/BMG's marketing, promotion and advertising of performer Clay Aiken presented a public image of a family friendly performer whose character was above reproach. This "clean cut" image extended to Mr.

Aiken's sexuality, which although being the subject of much speculation, has consistently been presented as being heterosexual.

Recent media reports have revealed that Mr. Aiken's private behaviors and actions are vastly different from the manufactured packaged public image of Aiken that was marketed and advertised to consumers. This is both deceptive and misleading.

2. Collusion To Misrepresent

On information and belief, it is further maintained that specific executives and employees of RCA, SONY/BMG and Aiken were aware of Aiken's behaviors and conduct that contradicted this established public image and engaged in collusion in an active attempt to mislead consumers and keep what was perceived to be potentially damaging information from becoming public. This is tantamount to a manufacturer concealing information about a defective product.

These individuals, among others in the employ of RCA, SONY/BMG, and Aiken, are identified as Roger Widynowski, RCA and SONY/BMG's Director of Publicity, and John Dahlstrom, Aiken's former assistant and hairdresser.

Most recently, representatives for RCA, SONY/BMG and Aiken have avoided any questions related to these revelations.

With SONY/BMG's \$10 million dollar settlement in NY State Attorney General Spitzer's investigation into the practice of deceptive Payola radio promotion undertaken by the recording industry, it is an established pattern of deceptive marketing and promotion that extends here.

Title 15, Section 52 of the U.S. Code states that "it shall be unlawful for any ... corporation to disseminate, or cause to be disseminated, any false advertisement." Title 15, Section 55 defines "false advertisement" as an advertisement that is "misleading in a material respect." Section 5 of the FTC Act prohibits "deceptive acts or practices."

In sum, RCA's and Sony/BMG's marketing and promotional practices meet all three elements of the FTC Policy Statement on Deception (October 14, 1983): (1) the misrepresentation is likely to mislead the consumer; (2) the misrepresentation is likely to mislead a reasonable consumer; and (3) the misrepresentation is a material one.

As reasonable consumers, we were (1) misled by the accompanying marketing, advertising and promotion behind Mr. Aiken. (2) The recording entities and employees of same were aware of the misrepresentations and sought to conceal them. (3) The misrepresentations are material, affecting every consumer of any of Aiken's CDs, concerts, or merchandise, and extend over all aspects of the promotion, marketing and advertising of same.

We urge the FTC to investigate this matter fully and exercise any and all means to enjoin RCA and SONY/BMG from engaging in further deceptive marketing and promotion of their artists.

Sincerely,

Nine Aggrieved Consumers

Susan J. Patricia A. Jacquelyn C. Karen G.
Raleigh, NC Raleigh, NC Durham, NC San Francisco, CA

Phyllis S. Carol M. Karen G. Linda F. Kim M.
Boston, MA Boise, ID Los Angeles, CA Scottsdale, AZ Newark, NJ

cc: Pamela Jones Harbour, Commissioner
Jon Leibowitz, Commissioner
William E. Kovacic, Commissioner
J. Thomas Rosch, Commissioner

1 In a 2003 interview, arranged by RCA, with ABC news reporter Diane Sawyer and broadcast nationwide, Mr. Aiken made certain assertions about himself and his public image.

Diane Sawyer: You never lost a love?

Clay Aiken: I don't know that I've ever been in love...so...uh...and that doesn't really bother me...uh..I don't necessarily fall quickly. I'm OK with how I look and who I am but I'm not confident enough to go after somebody and have her reject me or that type of thing. I'm kinda shy when it comes to big social situations.

Diane: In Rolling Stone he hinted he's a virgin and denied what's asked him over and over again. Is he gay? He says no.

Clay: Somebody asked it right after the finale of the show...in the press conference with Ruben and me. I think the problem is I don't think people know who what to do with me. They don't know anything about me. I'm not completely blind and stupid. I've got a southern accent which people say is...uh...

Diane: All southern people are gay.

Clay: Well not...and English people too...

Diane: Oh well THAT

they laugh

Clay: I have some very effeminate qualities. I try to make sure I'm clean. I was raised by my mom and my 2 grandmothers really for a long time. I'm not completely blind to it. I have got used to people asking the question. They think...OK he doesn't drink, he doesn't go out and have sex with every woman that he sees.

I think its high time there's somebody who represents people who aren't gay but don't sleep around with everybody, you know. If I'm supposed to carry the banner for all the nerds in the world I'm fine with that too.

Additionally, Aiken appeared on the cover of the June 2003 issue of Rolling Stone with the headline "Growing Up Clay." In the article, and in subsequent interviews with Larry King, Aiken admitted he had "some feminine qualities" but insisted he wasn't gay.

On the road to retirement? Check out MSN Life Events for advice on how to get there! <http://lifeevents.msn.com/category.aspx?cid=Retirement>